IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.179 OF 2007
IN
NOTICE OF MOTION NO.546 OF 2007
IN
S.C.SUIT NO.517 OF 2007
WITH
CIVIL APPLICATION NO.263 OF 2007

Hutchison Essar Ltd. ...Appellants

Versus

Mohan S.Menon ...Respondent

.....

Mr.G.S.Godbole with Mr.Punit B Anand for Appellants.

Respondent present in-person.

.....

CORAM: A.M.KHANWILKAR, J.

MARCH 8, 2007.

P.C.

1. Heard.

2. Admit. Respondent Mr.Mohan S.Menon who appears in-person waives notice.

3. As short question is involved, Appeal is

taken up for hearing forthwith, by consent.

4. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court, Bombay dated 15th February 2007 in Notice of Motion No.546 of 2007 in S.C.Suit No.517 of 2007. The Respondent instituted suit before the Trial Court for the following reliefs :

> "a) That it be declared that the action of the Defendants in disconnecting the services to the suit mobile number 9820744003 is arbitrary, illegal, bad in law and ipsi facto null and void.
>
> b) That the Hon'ble Court be pleased to direct the Defendants their servants agents officers and representatives by a mandatory order to restore the services back to the suit mobile number 9820744003 forthwith.
>
> c) Ad-interim and interim reliefs in terms of prayer clause (b).
>
> d) Cost of the suit be provided.
>
> e) Any further and such other reliefs as the Hon'ble Court deem fit and proper in the nature and circumstances of the case."

5. During the pendency of the Suit, Respondent took out Notice of Motion No.546 of 2007

for the following reliefs:

> "a) that the Hon'ble Court be pleased to direct the Defendants their servants, agents, officers and representatives by a mandatory order to restore the services back to the suit mobile Number 9820744003 forthwith.
>
> b) Interim and Ad-interim reliefs in terms of prayer (a) above be granted;
>
> c) Cost of the Notice of Motion be provided for;
>
> d) Any further and such other reliefs as the Hon'ble Court deem fit and proper in the nature and circumstances of the case."

6. The Trial Court by the impugned order has granted ad-interim relief in favour of the Respondent in terms of prayer clauses (a) and (b). The operative order of the Trial Court reads thus:

> "Ad-interim reliefs in terms of prayer clause (a) and (b) is granted in favour of Plaintiff.
>
> Issue notice to Defendant to show cause as to why ad-interim relief in favour of the Plaintiff should not be confirmed till final disposal of the suit.
>
> At the request of learned counsel Mr.Puneet Anand for Defendants, two weeks is granted to approach the Hon'ble High

> Court for obtaining appropriate orders as may be deemed fit. In the meantime, execution of ad-interim order shall remain stayed.
>
> Certified Copy is expedited."

7. It is inconceivable that mandatory order of the kind which has been passed by the Trial Court can be granted as ad-interim order, that too, without waiting for the show cause which under the same order the Trial Court caused to issue to the Appellant/Defendant. It is well established position that such drastic orders should be eschewed and to be passed only in exceptional situations, for which, reasons are required to be recorded. The case on hand is not a matter where such mandatory order could have been passed. Hence, impugned Judgment and order deserves to be set-aside.

8. Accordingly, this Appeal succeeds. Impugned Judgment and Order is set-aside.

9. The Trial Court may proceed to hear the Notice of Motion on its own merits in accordance

with law, uninfluenced by any observation in the impugned Judgment or for that matter, the present order.

10. Appeal and the companion Civil Application stand disposed of.

A.M.KHANWILKAR, J.